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July 19, 1999

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Re: CC Docket No. 98-141

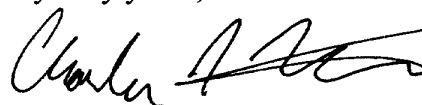
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Metrocom, are an original and eight copies and its Petition of TDS Metrocom to Hold Proceedings in Abeyance Pending Resolution of Investigations into Ameritech Anticompetitive Practices submitted in connection with the above-referenced proceeding.

In the event that there are questions concerning this matter, please communicate with this office.

Very truly yours,



Charles R. Naftalin

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Enclosures

cc(w/enc.): Frank Lamancusa, Esq.
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re the Applications of)
)
AMERITECH CORP., Transferor, and)
SBC COMMUNICATIONS INC., Transferee,) CC Docket No. 98-141
)
For Consent to Transfer Control of Corporations)
Holding Commission Licenses and Authorizations)
Pursuant to Sections 214 and 310(d) of the)
Communications Act and Parts 5, 22, 24, 25, 63,)
90, and 101 of the Commission's Rules)

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FEDERAL COMMUNICATIONS COMMISSION
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**PETITION OF TDS METROCOM TO HOLD
PROCEEDING IN ABEYANCE PENDING RESOLUTION OF
INVESTIGATIONS INTO AMERITECH ANTICOMPETITIVE PRACTICES**

TDS Metrocom ("Metrocom"), by its attorneys, hereby urgently requests that the Commission hold the instant proceeding in abeyance pending the resolution of the formal complaint which was initiated more than a month ago by Metrocom against Ameritech and the Commission's investigation into Ameritech's local number portability tariff. Metrocom submits that the Commission must resolve these investigations into Ameritech's current, on-going anticompetitive practices before it may permit transfer of Ameritech's authorizations to SBC, or at minimum, require SBC's specific commitments to address these matters.

Metrocom is a competitive local exchange carrier ("CLEC") operating in the state of Wisconsin. Metrocom's provision of services to customers largely depends upon services provided to it by Ameritech, the dominant incumbent local exchange carrier ("ILEC") under their interconnection agreement dated as of August 29, 1997. Ameritech is, and has been, in overt violation of that interconnection agreement, repeatedly wreaking anticompetitive havoc upon Metrocom, interfering with its customer relations, and to a considerable extent, destroying its business opportunities by affirmatively damaging the quality of service Metrocom is able to

provide to its customers in competition with Ameritech.

Metrocom brought evidence of this pattern of anticompetitive practices to the attention of the Commission's staff early in June, urging initiation of a formal complaint under the Commission's new accelerated docket procedures. Metrocom has moved as rapidly as feasible to bring its claims to Ameritech and resolve them as expeditiously as possible, but as matters now stand, Metrocom has been abused by the anticompetitive conduct of Ameritech and it is entirely possible that Ameritech's merger into SBC could further entrench this pattern of anticompetitive conduct, causing the fledgling local exchange competition from Metrocom (and other CLECs) to be diminished or destroyed.

Metrocom's complaint against Ameritech is in its early stages, prior to discovery, but it is able to establish the following.

On or about April 29, May 26 and July 8, 1999, Ameritech caused large network outages to Metrocom's operations, and on May 15, May 16, May 27, and July 9, 1999, Ameritech caused smaller scale outages to Metrocom.¹ These outages were hours in duration, almost entirely during regular business days.² In all of these instances, callers from the Ameritech system into

¹Privately, Ameritech personnel have explained to Metrocom that various Ameritech network problems, including problems with Ameritech's local number portability ("LNP") databases, have caused the outages.

²The interconnection agreement between Ameritech and Metrocom flows out of Sections 251 and 252 of the Communications Act, and related Commission Rules. The agreement specifically requires Ameritech to provide unbundled network elements ("UNEs") and related services and facilities to Metrocom on a nondiscriminatory basis at levels of quality and reliability at least equal to what Ameritech provides to itself. In other words, Ameritech is required to offer full parity to Metrocom. This has not occurred. Instead, Metrocom has experienced numerous service outages and irregularities in provisioning, and Ameritech has not, clearly indicating a fundamental disparity in services, ordering systems, redundancy and network robustness. Ameritech's pattern of conduct makes it clear that it has been in specific violation of many provisions of the interconnection agreement, including those directed to equality of local

Metrocom customers were blocked by a message stating that the number called had been disconnected. This disconnection message was not identified as an Ameritech message. At none of these times were Ameritech customers' incoming calls blocked, only CLEC lines were affected.

These disconnection messages could not have been better designed to harm the business operations, reputations and personal lives of Metrocom's customers, and therefore, undermine the relationship Metrocom has with its customers, diminish its reputation for quality, and drive current customers to "switch back" to Ameritech. Disconnection indicates loss or disappearance. A neutral message would have been less harmful.

Ameritech senior management has refused Metrocom's repeated requests to issue public statements admitting that the "disconnection" outages were caused by Ameritech network problems, not Metrocom, or to assure the public generally that disconnection had not taken place. By failing to issue such statements, and by failing to identify the message as originating with the Ameritech network, Ameritech necessarily has caused the public to believe that Metrocom system unreliability has been the cause of these problems, when it has not.

At the same time that Ameritech has refused to accept public responsibility, privately Ameritech customer service and sales personnel have used the outages as marketing opportunities to make inroads into Metrocom's competitive success. Metrocom is aware of a large number of instances in which Ameritech personnel have told Metrocom current or potential

number portability service, pre-ordering, ordering, provisioning, maintenance and repair, and advance notice and coordination of network or switching changes. In this regard, Ameritech has worked changes in network operations during business hours (rather than low traffic evenings and holidays), without any advance notice or coordination, which have damaged Metrocom operations. Such harm is in direct violation of the interconnection agreement and in disregard of Metrocom's numerous efforts to coordinate services and installations.

customers that the network outages were evidence of Metrocom unreliability and solicited customers to stay with Ameritech, or to switch back. Witnesses report that Ameritech personnel use the "disconnection" outages (caused by Ameritech) as examples of Metrocom network unreliability.

To date, Ameritech has not eliminated the disconnection message or mitigated the competitive problems it has caused, even though such outages have occurred several times, starting in April, and continuing (so far) into July. Metrocom repeatedly has asked for explanations of the outages, and Ameritech plans to address them, but Ameritech has refused steadfastly to include Metrocom in its plans to address and remove these network problems. The first substantive break in Ameritech's silence on what it actually may be doing (or ignoring) did not occur until Ameritech representatives were called to a meeting at the Commission, presided over by members of the Commission's Enforcement Division staff a few days ago on Thursday, July 15, 1999, as part of the formal complaint process initiated by Metrocom.³ While Metrocom is hopeful that this meeting may have started a process to resolve Ameritech's anticompetitive conduct, it must be understood that Ameritech was grossly unresponsive in its communications with Metrocom and dilatory in its actions until called to the table by the Enforcement staff.

In addition to switching and LNP problems, Ameritech is responsible for a number of

³By fax sent Friday (July 16, 1999), Metrocom received a copy of a letter dated July 12, 1999, from an Ameritech General Manager, sales, for the first time offering a written explanation of the May 26th system-wide blocking by Ameritech of Metrocom's incoming calls, *six weeks after the event*. This brief letter indicates that Ameritech plans to eliminate the "disconnection message" by August 30, 1999, more than four months after Metrocom called it to Ameritech's attention after the major outage in April, and that Ameritech provided a "Root Cause Analysis" to the Commission's staff by letter dated June 21, 1999, but which has not been provided to Metrocom. In short, timely responses, cooperation and coordination by Ameritech remain lacking.

other serious anticompetitive abuses, including failure to offer appropriate Operations Support Systems (“OSS”) functions; failure to honor scheduled service turn up commitments, leaving the impression with new customers that Metrocom is unreliable; and interference with Metrocom’s ability to provide digital subscriber lines (“DSL”) service. In this regard, Ameritech applies nonrecurring “construction charges” to provision of DSL lines which, Metrocom is confident, are inconsistent, unjustified, and substantially higher than what Ameritech attributes to its own provision of DSL service.⁴

As noted above, Metrocom is pursuing a formal complaint against Ameritech in connection with these matters, and others. While the Commission sponsored meeting held a few days ago as part of that process established that Ameritech was aware of the anticompetitive actions described here, understands them to be of a very serious nature, and has expressed willingness to address them, there are no concrete resolutions yet. Metrocom submits that until the Commission’s Enforcement staff is satisfied that Ameritech actually has resolved these current competition problems, it would be premature to act upon the requested consent to merge.

As part of their proposed merger conditions, SBC and Ameritech have agreed to provide the Commission with a plan of improved OSS functions no later than the closing date of the proposed merger. (Proposed Conditions, p. 4) But, Ameritech currently is in violation of the OSS obligations set forth in its interconnection agreement with Metrocom. Also, SBC and Ameritech propose to improve deployment of xDSL in order to make it “not discriminatory.” (Proposed Conditions, pp. 13-14) But substantial allegations from CLECs are before the

⁴See also Request for Accelerated Docket Formal Complaint of Rhythms NetConnections, et al., dated June 8, 1999, alleging substantial and repeated anticompetitive conduct by Ameritech in connection with provisioning of xDSL service.

Commission concerning deployment of DSL lines.

Granting merger authority based upon unseen promises of improvement would not be warranted given Ameritech's history of broken commitments in its interconnection agreement. Similarly, the Commission lacks any specific commitments from SBC, the acquiring entity, about how it would address Ameritech's conduct. It is incredible for the parties to seek increased size and market power based upon promises of future conduct when current Ameritech performance is unlawful. As matters now stand, they should not receive Commission consent. Ameritech must reform its systems and processes before joining forces with SBC. And the Commission's staff and injured parties should be afforded review of these necessary reforms.

SBC and Ameritech proposed merger conditions fall short of ensuring an environment which fosters competition. There are many significant and obvious problems, including the following.

The proposed conditions would require the merged company to report on 20 agreed-upon performance measurements. Metrocom's experience demonstrates that Ameritech should achieve actual performance measurements before allowing a merger, not simply addressing reporting after-the-fact. There is no value in requiring the merged company to develop reporting measurements over the course of time, during which competition is likely to be imperilled.

While the proposed conditions are intended to improve OSS, which certainly is needed, Metrocom (and other CLECs) are trying to compete today. During the past 18 months, Metrocom has ordered thousands of UNEs from Ameritech but Ameritech processes still do not provide for a consistent and reliable method for delivering these loops. Future promises will not support competition now.

Ameritech provisioning is characterized by poor communication of order status, arbitrary

changes to Ameritech due dates, lost paperwork within the Ameritech organization and loop delivery problems that cause a delay in the delivery of the loop, or worse yet, a disruption in Metrocom customer service. Metrocom consistently has communicated these problems to Ameritech but these issues have not been addressed satisfactorily. Without immediate changes to current processes, Metrocom is impeded in the provision of high quality service to its customers and may not even be a competitor two years from now when the Commission may inquire into the effectiveness of Ameritech's proposed OSS enhancements.

For 18 months Metrocom has suffered from the inconsistent and unreliable nature of Ameritech's internal processes for fulfilling unbundled loop orders. Many of these processes, as described by Ameritech, require the manual intervention of Ameritech personnel. It is not credible that development of electronic OSS platforms will eliminate the inherent problems that exist within Ameritech's provisioning processes because overlaying an electronic OSS platform onto the existing poor provisioning processes will result only in a more expensive and cumbersome process. Ameritech should be responsible now for consistent provision of loops without delays and disruptions before being allowed to merge with another entity. After all, Ameritech committed to exactly such processes almost two years ago in its interconnection agreement with Metrocom (and presumably other CLECs). If Ameritech fails to honor contractual commitments under express provisions of the Communications Act, there is no valid reason to for the Commission to rely upon its more nebulous promises for the future.

SBC and Ameritech propose to provide advanced services through an unregulated affiliate. However, Ameritech has proposed a similar structure to the Public Service Commission of Wisconsin with its application for Telecommunications Carrier status for its

Ameritech Advanced Data Services unit ("AADS").⁵ The parties to that proceeding pointed out numerous inherent problems with this structure as well as citing specific examples of discriminatory practices by Ameritech in the provisioning of xDSL loops to its AADS operation, as compared to unaffiliated companies. It is clear from this proceeding that a separated advanced services affiliate of the merged companies will neither encourage nor enhance the deployment of competitive advanced services to customers. Indeed, the Wisconsin Commission currently is examining the discrimination in Ameritech xDSL conditioning charges.⁶ Ameritech's affiliate AADS pays, on average, less than one third of the conditioning charges for xDSL lines which, on average, Ameritech levies against CLECs in Wisconsin, and on average, less than one fifth of the conditioning charges assessed against Metrocom, also on average. Consenting to merger conditions probably would perpetuate these overtly anticompetitive practices.

Finally, the Commission currently is conducting a formal investigation of the local number portability tariff of the Ameritech Operating Companies in CC Docket No. 99-35. The Commission issued its designation order⁷ on February 26, 1999, and as recently as June 2, 1999, on its own motion, additionally designated Ameritech's May 27, 1999 number portability tariff transmittal for investigation in that proceeding.⁸

⁵Petition of Ameritech Advanced Data Services of Wisconsin, Inc. for Authorization to Resell Frame Relay Switched Multimegabit Data, and Asynchronous Transfer Mode Services on an Intrastate Basis and to Operate as an Alternative Telecommunications Utility in Wisconsin, Docket No. 7825-TI-100.

⁶Investigation into the Digital Services and Facilities of Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Docket No. 6720-TI-154.

⁷Order Designating Issues for Investigation, DA 99-374 (February 26, 1999).

⁸Memorandum Opinion and Order, DA 99-1071 (June 2, 1999).

Local number portability is an ILEC network element essential to CLEC competition, and rates for it have important effects on such competition. Ameritech has represented that at least some of its network outages harming Metrocom were caused by Ameritech number portability problems. The pending tariff investigation is an example of serious concern the Commission has about Ameritech anticompetitive conduct in connection with CLEC operations. Given the close relationship between the anticompetitive harm Ameritech has wreaked upon Metrocom already and the subject of CC Docket No. 99-35, that tariff investigation should be resolved satisfactorily before the Commission considers consenting to the proposed merger.

Therefore, Metrocom urges the Commission to hold merger review in abeyance until it is satisfied that outstanding competition issues concerning Ameritech have been resolved properly. Metrocom has no interest in unnecessarily delaying merger review and stands ready to make its best efforts to assist the Commission in investigating these matters and resolving them as expeditiously as possible.

Respectfully submitted,

TDS METROCOM



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July 19, 1999

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I, Donna K. Rhudy, a legal secretary in the firm of Koteen & Naftalin, L.L.P., hereby certify that on this 19th day of July, 1999 copies of the foregoing "Petition of TDS Metrocom to Hold Proceeding In Abeyance Pending Resolution of Investigations Into Ameritech Anticompetitive Practices" were hand delivered where indicated and deposited in the U.S. mail, first-class, postage prepaid, addressed to:

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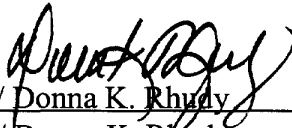
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